

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ARCPE HOLDING, LLC.,

-against-

9Q4USE LLC, CHASE MANHATTAN  
MORTGAGE CORP., DISCOVER BANK, BANK :  
OF AMERICA, N.A., NEW YORK CITY :  
ENVIRONMENTAL CONTROL BOARD, :  
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**SUMMARY ORDER DENYING  
PROPOSED JUDGMENT**

**19-cv-6417(DLI)(RER)**

**DORA L. IRIZARRY, United States District Judge:**

On May 12, 2022, the Court directed Plaintiff to file a revised proposed Judgment of Foreclosure and Sale and email a copy to the Court as a WORD document in Times New Roman 12 pt Font. *See*, Minute Order dated May 12, 2022. Plaintiff complied the same day. *See*, Proposed Judgment of Foreclosure and Sale (“Proposed Judgment”), Dkt. Entry No. 44. Upon consideration and review of the Proposed Judgment, the Court declines to approve it, without prejudice to resubmit, for the following reasons.

First, proposed judgment suffers from deficiencies. The proposed judgment fails to:

1. Direct where the notice of sale is to be published;
2. Set out the amount due to the referee for conducting the sale, in accordance with CPLR § 8003; and
3. Properly direct the order in which the referee distributes the proceeds of the sale, including the referee’s fees.

Second, Plaintiff included clauses in the proposed judgment that either are incorrect or unnecessary. Specifically, Plaintiff included a clause stating that the report of sale shall be made with “all convenient speed.” *Id.*, at 4. This is contrary to NYRPAPL § 1355(1), which states that the referee shall file the report of sale “[w]ithin thirty days after completing the sale and executing

the proper conveyance to the purchaser, unless such time be extended by the court within said thirty days[.]” Plaintiff also included a clause declaring that Plaintiff’s mortgage is a valid and existing lien *nunc pro tunc*. *Id.* at 6. However, Plaintiff and Defendant Bank of America have stipulated that the “Full Discharge of Mortgage” executed by Bank of America and recorded in the Office of the City Register was recorded erroneously and removed from the record. *See*, Stipulation at ¶3, Dkt. Entry No. 28-1 at 3. The Court electronically endorsed this stipulation. *See*, Minute Order dated June 4, 2020. Clauses that are contrary to law or extraneous should not be included in the Proposed Judgment. Furthermore, Plaintiff incorrectly filed the Proposed Judgment as a “Proposed Scheduling Order.” Plaintiff must use the correct Electronic Case Filing (“ECF”) event when filing documents. Finally, the last page of the document emailed to the Court appears to be an image that, contrary to the Court’s directive, is not in Times New Roman 12 pt Font.

Accordingly, it is hereby ORDERED that, BY NO LATER THAN SEPTEMBER 1, 2022, Plaintiff shall: (1) file an amended proposed judgment, consistent with this Order and in compliance with relevant law; (2) email the amended proposed judgment as a WORD document in TIMES NEW ROMAN 12 PT FONT to the Court at [irizarry\\_chambers@nyed.uscourts.gov](mailto:irizarry_chambers@nyed.uscourts.gov); and (3) prior to filing the amended proposed judgment, serve a copy on Defendants and file proof of service with the Court along with the amended proposed judgment.

SO ORDERED.

Dated: Brooklyn, New York  
August 4, 2022

/s/  
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DORA L. IRIZARRY  
United States District Judge